**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 1675 of 2007**
**To**
**SPECIAL CIVIL APPLICATION No. 1693 of 2007**

**For Approval and Signature:**

**HONOURABLE THE CHIEF JUSTICE Y.R.MEENA**

**HONOURABLE MR.JUSTICE A.S.DAVE**

==========

**SHAH FORUM UMESHBHAI (MINOR)**
**Versus**
**JUSTICE R J SHAH (RETD.) ADMISSION COMMITTEE(MEDICAL) & others**

==========

**Appearance :**

Mr. Dhaval C. Dave for the petitioners
Mr. B.P. Tanna, Senior Advocate, with Mr. Mahrook Kerawala for respondent No.1

Mr. A.J. Shastri for respondent No.2

Mr. A.J. Yagnik for respondent No.3

==========

**CORAM : HONOURABLE THE CHIEF JUSTICE Y.R.MEENA**

**and**

**HONOURABLE MR.JUSTICE A.S.DAVE**

**Date : 24/04/2007**

C.A.V. COMMON **JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE A.S.DAVE)**

1 This group of cognate petitions involves issue as to whether each of the petitioners falls within the concept 'NRI' for the purpose of seeking admission to self-financed unaided institutions [hereinafter to be referred to as 'SFI'] conducting Medical, Dental and other such professional courses, pursuant to the order passed by Their Lordships on 8th January 2007 in I.A Nos. 16-18, 19-21 in Civil Appeal No. 4480 of 2006 & I.A. Nos. 22-25 in I.A. Nos.16-18 in Civil Appeal No.4480 of 2006 with I.A. Nos.11-14 in Civil Appeal No.4482 of 2006.

2 Thereafter, all the matters were listed before the learned Single Judge {Coram: D.A. Mehta, J.} on 17th January 2007 and, by order dated 17th January 2007, the learned Single Judge has observed as under:

> "1. This petition and the group of cognate petitions involve the issue as to whether each of the petitioners fall within the concept of "NRI" for the purpose of seeking admission to self-financed unaided institutions conducting medical, dental and other such professional courses.
>
> 2. Vide order dated 13th November, 2006 made in interlocutory applications Nos. 9-10 and 11-12 in Civil Appeal No. 4480/06, the Apex Court has specified the following three categories to be treated as being eligible for the purpose of seeking admission in the NRI quota in the self-financed institutions.
>
> *1] The students be admitted as NRIs in NRI quota as against 15%: At least one of the parents of such students should be an NRI and shall ordinarily be residing abroad as an NRI;*
> *2] The person who sponsors the student for admission should be a first degree relation of the student and should be ordinarily residing abroad as an NRI;*
> *3] If the student has no parents or near relatives or taken as a ward by some other nearest relative such students also may be considered for admission*

*provided the guardian has bona fide treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the affairs of the student and also his relationship with the student and such person also should be an NRI, and ordinarily residing abroad.*

3. There is no dispute between the parties in relation to first two categories. In relation to the third category this Court has already taken a view that there can be a guardian of a ward only in a case where either parent is not alive. The petitioners and respondent No.1-Committee are reading the third category as enunciated by the Apex Court to mean that there could be a guardian even in a case where either parent is alive.

4. In the case of **Vishal Nilesh Mandlewala v. Justice R.J.Shah (Retd.) & Ors**. in Special Civil Application No. 20819 of 2006 vide judgment dated 10th November, 2006, I have stated as under:

*"23. Thus on a conjoint reading of the scheme under the Guardians Act and the scheme under the Hindu Minority Act (bearing in mind that the latter Act is supplemental to the Act of 1890) the position in law is that in case of a Hindu minor during existence of a natural guardian the Court is not authorized to appoint any other person as a Guardian and if any such order is made the same would be bad in law. The only exception being, where the Court finds that the natural guardian is not fit to continue as a guardian of the minor.*

*24. The father of a child is the first person to be a natural guardian followed by the mother. Only in absence of the natural parents can the question arise as to appointment of any other person, including a relative, as a guardian. Once it is found that a natural guardian is alive, and is otherwise not unfit legally to act as a guardian, no Court can exercise power to appoint any other person as a guardian. If a Court established in India is not so empowered no foreign Court can be stated to have any such power".*

5. The aforesaid Category No.3 laid down by the Apex Court

specifically opens with the phrase “if the student has no parents or near relatives.....”. The submission on behalf of the petitioners is that this phrase need not be read to mean that a student can be permitted to fall in the Category No.3 only in absence of either parents. In light of the view that I have already taken in the case of Vishal Nilesh Mandlewala (supra), it would be in the fitness of things if the present group of petitions are placed before another bench or a larger bench, considering the fact that Letters Patent Appeal being L.P.A. No.1538/06 is pending before Division Bench.

6. The registry is, therefore, directed to place the matters before Hon'ble the Chief Justice for appropriate orders.”

2.1 In view of the above order, the matters were placed by the office before the Honourable the Chief Justice on administrative side for appropriate orders and, accordingly, the matters are listed before this Court on 24th January 2007.

2.2 On 24th January 2007, when the matters came up for hearing, Shri B.P.Tanna, learned Senior Advocate appearing for Justice R.J. Shah Committee, sought time to file affidavit-in-reply in the Registry. Accordingly, the matters were listed for hearing on 31st January 2007. On 31st January 2007, Shri A.J. Yagnik, learned counsel appearing for the students admitted on merits from the State list, prayed for time to file an application for impleading them as party-respondents. Thereafter, the matters were placed for hearing on 8th February 2007 along with Civil Application No.2020 of 2007 filed for impleading party, which came to be allowed on the same day. Then, the matters were adjourned to 12th February 2007. By order dated 21st February 2007, the learned

counsel appearing for the petitioners being not fully prepared with the facts, was directed to give relevant dates in sequence of happening from the date of application for admission. Since the original affidavits given by the NRIs were not on record, the learned counsel for Justice R.J. Shah Committee was also directed to place affidavits and necessary materials on record and, lastly, all the requirements on facts for scrutiny of affidavits filed by the NRIs are made available to this Court and, after service of notice to all the SFIs and respondent No.2 herein, the matters were taken up for final disposal.

3 That pivotal issue, which is to be considered by this Court, is with regard to concept of “NRI', as laid down by Their Lordships in the order dated 13th November 2006 by way of pro-tempore paradigm, by which, three categories of NRIs considered legal and valid for filling up of seats of 15% NRI quota by the SFI for admission to various professional courses in the State of Gujarat for this Academic Year 2006-2007 only. So far as Category Nos. 1 and 2 are concerned, they are about either of parents NRI and first Degree relationship and there is no dispute between the parties. The only issue remains with regard to Category 3 and, as per this category, who can be said to be eligible student for admission in NRI quota. Category 3 begins with the phrase, 'if the student has no parents or near relatives or taken as a ward by some

other nearest relatives, such students also may be considered for admission provided the guardian has bona fide treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the affairs of the student and also his relationship with the student and such person also should be an NRI, and ordinarily residing abroad.

4 The petitioners have challenged the order dated 26th December 2006 passed by the Justice R.J. Shah Committee cancelling their admissions in NRI quota as contrary to the directions contained in the order dated 13th November 2006 passed by Their Lordships.

5 It is not in dispute that, by order dated 12th October 2006 in Civil Appeal No.4480 of 2006, Their Lordships have earmarked 15% seats to be admitted by the SFIS from the quota reserved for NRI candidates, in view of the judgment of the Apex Court in the case of P.A. Inamdar vs. State of Maharashtra, reported in [2005] 2 SCC 537.

5.1 By an order of 13th November 2006, Their Lordships issued certain directions for regulating admission of 15% NRI quota and, for the sake of convenience, the order is reproduced hereinbelow:

> "I.A. Nos.3-4 & 5-10 in C.A. No.4482/2006:
>
> Applications for impleadment are allowed.
>
> Application for exemption from filing O.T. are allowed.
>
> In P.A. Inamdar & Ors vs. State of Maharashtra & Ors, reported in 2005(6) SCC p.537, this Court permitted the Medical

college/professional colleges to admit the students of Non-Resident Indians. In paragraph 131 of the judgment, this Court observed:-

"131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the Institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate."

In the State of Gujarat there was a dispute regarding admission to the medical colleges for the academic year 2006-07 and this Court, by an order dated 12th October,2006, permitted these colleges to admit 15% of their seats by candidates from the NRI quota. We also made it clear that Justice Shah Committee appointed in this regard would be at liberty to go in to the objections and pass appropriate orders and in case there is any difficulty, the candidates would be at liberty to approach this Court. Subsequent to this order, the admissions were made by these colleges and the matter was placed before Justice Shah Committee. Justice Shah Committee had formulated certain admission procedure to carry out admission in NRI quota. It may be noted that as stated in paragraph 131 of Inamdar's judgment (supra) no suitable legislation or regulation have

been framed by the State or Medical Council of India. The admissions made by these colleges were scrutinized by the Committee on the basis of the admission procedure laid down by the committee itself and the students who have been admitted under the NRI quota had been found ineligible by the Committee. The present interlocutory applications have been filed by the colleges against the directions given by Justice Shah Committee. The petitioners/applicants allege that in view of the direction given by Justice Shah Committee, the colleges are not in a position to fill up the NRI quota. From the Committee's guidelines we see that the definition of NRI itself is to be strictly construed as 'NRI' as defined under the Income Tax Act, 1961. It is also made clear by the Committee that the parents of the candidates should be permanently residing abroad and wards of NRIs shall be person adopted by a guardian should be testamentary, certified, natural or even de-fecto and an officer from the Income Tax Department shall verify the documents at the time of admission with regard to status of NRI. These directions are challenged before us. Of course, these guidelines have been fixed for the purposed [sic] to be admitted by the colleges and because of pending proceedings the same could not be finalised.

Normally, the admissions to the medical colleges should have been finally concluded before 30th September. This year's admission is long overdue and if this 15% of the students are not allowed to be admitted under NRI quota, there may be financial loss to these colleges and the seats shall also go waste. In view of the peculiar circumstances of the case, for this year, we are taking a practical view of the situation and feel that the students to these colleges may be admitted under the following directions and we make it clear that this is exclusively for this year only as a one time arrangement because of the peculiar circumstances of the case:

1] The students be admitted as NRIs in NRI quota as against 15%: At least one of the parents of such students should be ordinarily residing abroad as an NRI;

2] The person who sponsors the student for admission should be a first degree relation to the student and should be ordinarily residing abroad as an NRI:

3] If the student has no parents or near relatives or taken as a ward by some other nearest relative such students also may be considered for admission provided the guardian has bona fide treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the affairs of the student and also his relationship with the student and such person also should be an NRI, and ordinarily residing abroad.

Even if these parameters are applied and sufficient number of students are not available for this year as against admission to 15% quota, the college would be at liberty to fill up the remaining seats from the State list and if the number of candidates admitted as against 15% quota is

very much less and the colleges are unable to raise sufficient funds they would be at liberty to approach the Committee to restructure the fees.

It is clarified that the students who will be admitted against the NRI quota should have the basic qualification fixed by the Medical Council of India/Dental Council of India for admission in Medical/Dental graduate courses.

In view of the above directions, the admissions for this year shall be completed within 10 days and on the 11th day the same shall be placed before Justice Shah Committee for the action if any as indicated in our previous order.

The I.A.s are disposed of accordingly.

In view of the order passed above, the remaining interlocutory applications except I.A. Nos. 11-12 in C.A. No.4480/06 and I.A. Nos. 3-5 in C.A. No.4480/2006 are disposed of.

"I.A. Nos.11-12 in C.A. No.4480/2006 & I.A. Nos.3-5 in C.A. No.4481/2006:

Issue notice. Post the applications on next Friday i.e. 24th November 2006."

5.2 The Apex Court, in the order dated 13th November 2006, referred to paragraph 131 of P.A. Inamdar judgment (supra) and factual scenario about the dispute in the next paragraph and criteria laid down by Justice R.J. Shah Committee to construe the definition of "NRI". In third paragraph, it is observed that admission in medical colleges normally should have been finally concluded before 30th September, and in the academic year 2006-2007, it is long over-due and, if 15% of students are not allowed to be admitted under NRI quota, **there may be financial loss to those colleges and the seats would go waste** and, therefore, in view of peculiar facts and circumstances of the case, in this year only, Their Lordships took a practical view of the situation and felt that the students to such colleges may be admitted under three categories of NRI

laid down thereafter and, in the same paragraph, it was made clear that the above pro-tempore paradigm was exclusive for the Academic Year 2006-2007 as one time arrangement because of the peculiar facts and circumstances. Besides, SFI's were given liberty to fill up the remaining NRI quota from the State list, in case, even if the above parameters are applied and sufficient number of students are not available and, lastly, if the candidates are much less in NRI quota, then to approach the Committee to restructure fees.

5.3 Thus, Their Lordships have taken into consideration paragraph 131 in the judgment of P.A. Inamdar [supra], which mandates that seats for NRI quota should be utilized by NRI bona fide only for their children or wards and, normally, in the quota of NRI, merit should not be given a complete go-by. However, after considering the difficulties faced by the students and colleges alike and interpretation of "NRI", as defined under the Income Tax Act,1961, considered by Justice R.J. Shah Committee stricto-sensu, Their Lordships have given certain directions in the order dated 13th November 2006 and, there being no dispute with regard to Category Nos. 1 and 2 of the above order, the only dispute is with regard to category 3, for which arguments have been canvassed by the learned advocates at length after referring to various orders passed by Their Lordships in the Interlocutory and Intervention Applications, the kind of relationship of NRI sponsoring students with such students, ground for

rejection of such affidavits by Justice R.J. Shah Committee and also the statement made by the learned Additional Solicitor General before the Apex Court and also kind of requirement to file such affidavits, as per direction of Their Lordships.

5.4 The above dispute regarding admission to Medical Colleges for the Academic Year 2006-2007 in the State of Gujarat, was resolved substantially by the order dated 12th October 2006 and Justice R.J. Shah Committee was given liberty to go into the objections and pass appropriate orders with regard to admission granted by the SFIs to admit 15% seats to the candidates from NRI quota. Therefore, when the criteria were laid down by Justice R.J. Shah Committee subsequently to determine category of NRI, the students aggrieved by the decision of Justice R.J. Shah Committee approached the Apex Court in I.A Nos.3-5 in Civil Appeal No.4481 of 2006, with I.A. No.13 in C.A. No.4480 of 2006 with I.A. Nos. 3-4 & 5-10, in C.A No.4482 of 2006, and an order came to be passed only in I.A. Nos. 3-5 in C.A. No.4481 of 2006 and I.A. Nos.11-12 in C.A. No.4480 of 2006 and IA No.13 in C.A. No.4480 of 2006.

5.5 It is to be noted that IA Nos.6-7 filed by Justice R.J. Shah Committee for clarification of Category 3 of order dated 13th November 2006 was rejected by order dated 24th November 2006, which reads as under:

"I.A. Nos.6-7 in C.A. No.4481/2006

No clarification is required in view of the order passed by this Court on 13th November 2006. I.A. is disposed of accordingly.

I.A. Nos.3-5 in C.A. No.4481/2006

These applications are disposed of in terms of the order passed by this Court on 13th November 2006.

I.A. Nos.11-12 in C.A. No.4480/2006

As regards respondent No.4-college, counsel for the applicant/petitioner prays for withdrawal of the application with liberty to file a fresh application. Permission granted for doing so.

As regards respondent No.3 - The Committee will take appropriate action to fill up the remaining seats within a period of 10 days in terms of the order passed by this Court on 13th November 2006.

I.A.s are disposed of accordingly.

I.A. No.13 in C.A. No.4480/2006

By order dated 12th October, 2006, this Court had permitted the professional/self-financing colleges in the State of Gujarat to fill up 15% of the NRI seats on the basis of the observations made by this Court in the case of P.A. Inamdar & Ors Vs. State of Maharashtra & Ors., 2005 (6) SCC p.587. It is alleged by the petitioner – three in number, that they had secured admission in the Dental Colleges pursuant to the order of this Court on 12th October, 2006 but by the subsequent order passed by this Court on 13th November 2006, these petitioners have been denied admission. In the order passed on 13th November, 2006 we had indicated certain criteria on which the admission of the 15% NRI quota was to be regulated. Following the order passed on 13th November, 2006, all admissions are over and the colleges have already submitted the details of the admissions to the Committee. As regards admissions, Justice Shah Committee has to take a decision. In case any seats are still vacant the claim of the petitioners shall be considered by the Committee and appropriate directions shall be passed. This may be done within a period of 10 days.

I.A. is disposed of accordingly."

5.6 Later on, order dated 15th December 2006 came to be passed, where Their Lordships have ratified 67 admissions in the NRI quota and rest of the applicants were directed to approach this Court. The order dated 15th December 2006 is reproduced hereinbelow:

> "Heard both sides.
>
> As regards the 9 private unaided medical colleges in the State of Gujarat, 120 applications were received under the NRI quota and out of the same 54 candidates were found eligible by the Shah Committee. Learned Addl. Solicitor General submits that four more candidates are eligible to be accommodated; another five candidates have submitted their applications beyond the period of time allotted, yet their applications could be considered for admission; four other candidates who have not submitted proper documents have been asked to file fresh documents and their admission would also be considered in accordance with the earlier order passed by this Court on 13th November 2006. For these 67 candidates, admissions are likely to be approved by the Shah Committee. We ratify the same. As regards the rest of the candidates, they would be at liberty to take appropriate action before the High Court. The applicants/their parents herein are at liberty to produce the documents before the Committee within 3 days and the Committee would be at liberty to take a final decision within 10 days."

5.7 Therefore, the scope of intervention by this Court is limited to as per the direction issued by Their Lordships in the above orders of 13th November 2006, 24th November 2006, 15th December 2006 and 8th January 2007.

6 At the outset, we make it clear that, at this stage, we are not concerned with the definition of NRI in stricto-sensu, as defined under the Income Tax Act, 1961, and, at the same time, definition of 'natural guardian, or a 'ward', as defined by the learned Single Judge of this Court in the order dated 10th November 2006 passed in Special Civil Application No.20819 of 2006 after relying upon the Guardians Act and the scheme under the Hindu Minority Act. As noted by Their Lordships in the order dated 13th November 2006, paragraph 131 of P.A. Inamdar (supra) is the dictate under Article 142 of the Constitution of India till

appropriate legislation in this regard is enacted by the Parliament.

7 Thus, we have recorded the following submissions of the learned advocates appearing for the rival parties for the scope of Category 3-NRI, as defined by Their Lordships in the order dated 13th November 2006.

8 Shri Dhaval Dave, learned counsel appearing for the petitioners in the group of cognate petitions, submitted that Category 3-NRI is the definition expanded by the Apex Court in view of the peculiar circumstances prevailing in the Academic Year 2006-2007 for admission in NRI quota by the SFIs in various professional courses so that financial loss caused to the SFIs can be mitigated and seats allotted to the extent of 15% for NRI quota may not go waste. That the departure by the Apex Court after reproducing paragraph 131 of P.A. Inamdar (supra) and the criteria decided by Justice R.J. Shah Committee, is suggestive of the fact that the Apex Court was alive to the grim situation, as submitted above, with regard to financial loss, vacant seats in NRI quota etc. and, therefore, the definition/concept of NRI is widened. According to the learned counsel for the petitioners, this arrangement was worked out for the Academic Year 2006-2007 only otherwise the seats for NRI quota may go unutlized. Therefore, the learned counsel for the petitioners, strenuously, urged this Court that the phrase in Category 3 in the beginning that, “if the student has no parents or near relatives or taken as a ward by some other nearest relatives xx xx xx” need not be read to

mean that student can be permitted to fall in category 3 only in absence of either parents or near relatives. The real meaning and interpretation of category 3 is that any student seeking admission in NRI quota is to be considered as eligible, provided such student produces an affidavit filed by a guardian treating such student as a ward bona fide and indicating interest shown in the affairs of the student and also his relationship with the student if the guardian is an NRI and ordinarily residing abroad. According to the learned counsel for the petitioners, the phrase beginning with, “if the student has no parents or near relatives or taken as a ward by some other nearest relative”, would mean that the student has no NRI parents or no near NRI relative or taken as a ward by some other nearest NRI relative, then such student also may be considered, provided other requirement subsequent to the above phrase is fulfilled. In other words, it is submitted that, if student fails to qualify under category 1 or category 2 of the order dated 13th November 2006, such student, on fulfilling criteria laid down in category 3, can be considered to be eligible student under NRI quota. In view of the above interpretation, it is submitted that phrase beginning in category 3 uses disjunctive “**or**” twice and it is followed by 'such students also may be considered for admission' which means that such student having no NRI parents or first degree NRI relatives as defined in category 1 or category 2 or even not taken as a ward by some other nearest relative, is required

to be considered for admission under NRI quota, if the criteria laid down by the Apex Court after the phrase are fulfilled. So, according to Shri Dhaval Dave, category 3 is a residuary clause in the categories prescribed by the Apex Court and brings under its sweep any NRI, who is residing abroad ordinarily and filing an affidavit indicating the interest shown in the affairs of the student/ward and his relationship with the student treating such student as a ward bona fide, irrespective of the fact that whether such student has no NRI parents or no NRI near relatives or not taken as a ward by some other nearest relative.

8.1 Therefore, according to Shri Dhaval Dave, the criteria fixed by Justice R.J. Shah Committee to define 'NRI' after the order dated 13th November 2006 are not in consonance with category 3 and irrelevant for determining eligible students in 15% NRI quota for the present academic year 2006-2007 and appropriate directions are required to be given to the Committee regularizing admission of the petitioners in NRI quota since the Colleges have permitted the students to attend the classes for the present Academic Year 2006-2007.

8.2 Learned counsel for the petitioners further submitted that NRI sponsoring student/ward herein and one of the parents of the petitioners filed affidavits before the Committee as well as before this Court, in case where original affidavit is not filed before Justice R.J.Shah Committee as prescribed in category 3 and, therefore, there is no justification on the

part of Justice R.J.Shah Committee to cancel admission of the petitioners. It is, inter alia, submitted that names of the some of the petitioners did find place in the statement, which was submitted by Justice R.J. Shah Committee to learned Additional Solicitor General, upon which, reliance was placed by Their Lordships in the order dated 15th December 2006, where, in all, admission for 67 candidates came to be ratified by the Apex Court. The statement of learned Additional Solicitor General includes four petitioners in the present group of petitions and, to that extent, rejection of their admission is clearly violative of the above order of the Apex Court exhibiting total non-application of mind on the part of Justice R.J. Shah Committee and subsequently corrective order passed incorporating certain reasons in the original order is nothing, but an after thought and, therefore, admission of such petitioners, whose names were reflected in the statement of learned Additional Solicitor General and came to be ratified by the Apex Court ought not to have been cancelled by Justice R.J. Shah Committee and this Court may pass an appropriate order directing the Committee to continue their admission without any disturbance.

9 Shri A.J. Shastri, learned counsel appearing for SFIs, has adopted the arguments canvassed by Shri Dhaval Dave.

10. Shri B.P. Tanna, learned Senior Advocate appearing for the Committee, at the outset, has submitted that this group of petitions is not

maintainable and is required to be rejected at the threshold on the ground that I.A. Nos.16-18 & 19-21 in C.A. No.4480 of 2006 raising similar grievance and prayer were not entertained by the Apex Court. According to the learned counsel for the Committee, vide order dated 8th January 2007, the Apex Court was pleased to reject the above Interlocutory Applications. It is, further, submitted that, in the present group of petitions, the petitioners have not challenged the policy of the Committee vide advertisement dated 7th December 2006 which is the basis of rejecting the petitioners' candidature for admission under NRI quota and the subject matter for challenge before the Apex Court, where, no order was passed on such challenge, and, therefore, the same is not required to be entertained by this Court in view of the fact that the said policy has attained finality. However, the learned counsel for the Committee is unable to dispute the operative order dated 8th January 2007, giving liberty to the petitioners to urge their grievances before this Court and to pass appropriate order.

10.1 Shri B.P. Tanna has further submitted that, in view of Articles 141 and 142 of the Constitution of India, the law laid down by the Apex Court is binding authority on the subject for which the decision is rendered and it is not open for this Court to add, amend, delete or incorporate any words in the order passed by the Apex Court. It is also submitted that, against the order of rejection of admission of the

petitioners under NRI quota, eligible meritorious candidate from the general list prepared by the State Authority pursuant to the outcome of GUJCET are already admitted and no seat remained vacant to be filled in as recorded in order dated 24th November 2006 and, therefore, there is fait accompli and any order that may be passed by this Court for direction to the Committee to consider the case of the petitioners, may result into disturbing the meritorious candidates from the general category who have also undergone the round of counseling and got admission on the basis of their merit. The learned counsel for the Committee has, further, emphasized that merit based admission even under NRI quota is available to a bona fide and genuine NRI for his ward and not to such NRIs who awakened from the slumber after the order passed by the Apex Court on 13th November 2006 and projected themselves as guardians of the students. According to Shri Tanna, paragraph 131 of P.A. Inamdar referred to by the Apex Court in the order dated 13th November 2006 is indicative of the fact that, though the Apex Court has widened the definition of NRI to the extent as indicated in category 3, it is the duty of this Court to interpret the order in light of the law laid down as reflected in paragraph 131 of P.A. Inamdar. It is, further, submitted that this Court cannot give a complete go-by to merit of the student as well as relationship of such students with NRI, in disregard to what is indicated by the Apex Court in its order dated 13th

November 2006. The learned counsel has emphasized that, though the order dated 13th November 2006 passed by the Apex Court is to operate for a period of one year for the present Academic Year 2006-2007 in the peculiar facts and circumstances of this case, the same cannot be permitted to bring under its net any kind of NRI irrespective of close or near relationship of such NRI guardian and ward so as to fill up the seat under the NRI quota despite the fact that meritorious candidates from the general list prepared by the State are readily available and such general category students also pay the prescribed fees by the SFIs. Thus, there will not be any financial loss to such colleges and no seats remain unutilized for the present academic year 2006-2007. However, the learned counsel for the Committee has doubted genuineness of the affidavits filed by the sponsoring NRI, contents thereof and non-fulfillment of criteria prescribed in category 3 by the Apex Court and, in a given case, original affidavits were not produced before the Committee and, therefore, it is submitted that the petitions filed by the petitioners do not require any further or detailed scrutiny and to be rejected at the threshold.

11 Mr. A.J. Yagnik, learned counsel appearing for the students belonging to the general category admitted on seats made available after rejecting admission of students under NRI category, submitted that the students belonging to the general category are more meritorious than the

students whose admission under NRI quota came to be rejected by the Committee. He has, further, submitted that, even in the general category, the students have also undergone two or three rounds of counseling and, subsequently, are admitted in various professional courses, namely, Medical Dental, etc. according to their merit. If any direction is given by this Court upholding the contention of the petitioner, the same would result into unavoidable and chaotic situation disturbing general category students who have even foregone their earlier admission in the professional courses and, in their place, other students are accommodated as per merit and, therefore, the cycle of adjusting and re-adjusting will be unending at the fag end of academic year 2006-2007, and ensuing annual examination. On other aspects, the learned counsel for the students belonging to general category has adopted the submissions made by the learned counsel for the Committee.

12 Having heard the learned advocates appearing for the rival parties and upon perusal of the voluminous record of 19 petitions, affidavits filed by the concerned parties, additional affidavits placed on record and the orders passed by Their Lordships in various Interlocutory/ Intervention Applications from 12th October 2006 to 22nd January 2007, we are inclined to accept few submissions of both the learned advocates appearing for the petitioners as well as the Committee, for the reasons stated hereinafter.

13 At the outset, S.C.A No.1675 of 2007 filed by Shah Forum Umeshbhai is permitted to be withdrawn in view of the statement made by the learned counsel for the petitioners that the student has got admission in other College and she is no more willing to pursue the matter.

**S.C.A. Nos.1681/2007, 1686/2007 & 1690/2007**

14 Before we construe category 3 NRI, it is relevant to reproduce the criteria prescribed by Justice R.J. Shah Committee for determining or defining NRI after the orders dated 13th November 2006 and 24th November 2006 came to be passed by the Apex Court. It is pertinent to note that, by the order dated 24th November 2006 passed by the Apex Court, I.A. No.6-7 for clarification of the order dated 13th November 2006 and the request to replace second 'or' with 'and' made by the Committee came to be rejected. The Committee has, therefore, based upon the decision of the Apex Court dated 13th November 2006, laid down criteria for admission against NRI quota, as under:

> "1. Qua this year and qua such students, it is not necessary that the student himself should be NRI.
>
> 2. If the mother or father of student is NRI and residing abroad ordinarily, then, either of the situation so held will be considered to be proper.
>
> 3. If the first degree relation of the student is NRI and residing abroad ordinarily, then, in such circumstances also, qua this year, should be considered eligible. It is natural that such definition would include the real brother and sister over and above the mother-father of the first degree relation.
>
> 4. As per the definition revised by the Hon'ble Apex Court,

interpretation of clause 3 thereof is not made limited but if made in a broad perspective, then, it is clear that the person who wanted to consider such student as ward (palya), then, he be considered to be proper subject to compliance of the following conditions:

(a) He should be the nearest relation.

(b) In the definition of the nearest relation, committee has considered following relatives having blood relations.

5. Real brother and sister of father i.e. real uncle and real aunt.

6. Real brother and sister of mother i.e. real maternal uncle and maternal aunt.

7. Father and mother of father i.e. grand father and grand mother.

8. (a) Father and mother of mother i.e. maternal grand father and maternal grand mother.

(b) Such person should be NRI

[c] Such person should ordinarily be residing abroad

(d) Such person should have looked after such student as the guardian of the student and evidence to that effect must have been produced before the committee by such person

(e) There should be affidavit with the aforesaid facts."

Thus, the Committee construed category 1, category 2 and also category 3 NRI other than first degree relationship of the students with sponsoring NRI ordinarily residing abroad. Even further, the scope was expanded and the Committee included even sponsors, namely, brother, sister, brother-in-law, sister-in-law of the students. It is also not in dispute that admission of 67 students under the NRI quota came to be ratified by the Apex Court on the basis of the statement made by the learned Additional Solicitor General. However, a clarification was made by the learned counsel for the Committee that the above ratification was on the premise that the admissions were likely to be approved by the Committee.

Therefore, reflection of names of some of the petitioners in the statement of the learned Additional Solicitor General, namely, of Special Civil Application No.1675 of 2006, Shah Forum [now stands withdrawn], Special Civil Application No.1681 of 2007, Patel Pooja, Special Civil Application No.1686 of 2007, Solanki Dimple, and Special Civil Application No.1690 of 2007, Premal Mayurika, was also subject to verification of documents by the Committee.

15 We are unable to accept the above submission of the learned counsel appearing for the Committee. In fact, disclosure of the names of students contained in the information supplied by Justice R.J. Shah Committee was the basis upon which the learned Additional Solicitor General made a statement and Their Lordships have placed reliance while passing the order dated 15th December 2006, when it is stated that four more students are eligible to be accommodated and, five students though not eligible, but can be found eligible if relationship is taken as family unit in this category of the list and other four candidates have claimed extendable or permissible definition of family as a unit, but were required scrutiny. It is to be noted that, out of five students, Shah Forum, Patel Puja, Premal Mayurika, and Solanki Dimple have produced relevant documents as directed by Their Lordships and as per extended and extendable concept of family unit, it was not open for the Committee to cancel or disturb the admission of these three students [Shah Forum

has already withdrawn the petition] on the ground of non-compliance of criteria prescribed in Category 3 of the order, when their admissions were ratified by Their Lordships.

16 So, out of 19 petitioners, one of the petitioners, Shah Forum has withdrawn the petition and three petitioners have filed affidavits of sponsoring NRI as per the requirements of criteria laid down in category 3 and, therefore, their cases require acceptance by this Court.

**S.C.A. Nos.1676/2007, 1677/2007, 1678/2007, 1679/2007, 1680/2007, 1682/2007, 1683/2007, 1684/2007, 1685/2007, 1687/2007, 1688/2007, 1689/2007, 1691/2007, 1692/2007 & 1693/2007**

17 We have carefully read the order dated 13th November 2006 passed by Their Lordships. While construing category 3 NRI, it is advisable to refer to categories 1 and 2 of the order dated 13th November 2006 and, if the order is read as a whole, Their Lordships have taken a practical view of the scenario prevalent in the matter of admission in various professional courses like medical, dental, etc. in SFIs for the academic year 2006-2007 in the State of Gujarat, where admission procedure continued beyond the deadline of 30th September 2006 fixed in the case of Mrudul Dhar and as per the schedule of the Medical Council of India. Their Lordships have taken note of the peculiar facts and circumstances of the case and reiterated the same before issuing directions. Their Lordships have reproduced paragraph 131 of P.A. Inamdar and earlier direction of 15% seats to be filled in from NRI quota

and, as per the order dated 12th October 2006, a modus is evolved, so that, twin objectives of paragraph 131 of P.A. Inamdar of bona fide utilisation of seats by genuine NRI and not to give complete go-by to merit in the matter of admissions to NRI quota, can be adhered to. Thus, with a view to salvage the financial conditions of SFIs and seats of NRI quota may not remain unutilized for the academic year 2006-2007 in the State of Gujarat in the professional courses of SFIs, certain parameters, what we have referred as categories 1, 2 and 3 of the order dated 13th November 2006, are laid down.

18. That indulgence shown by Their Lordships is sought to be exploited by the learned advocates for both the parties to the fullest to their advantage and submissions have been made of extreme interpretation contrary to the reasons for laying down three categories by Their Lordships.

19. We are quite conscious to the facts stated in the order dated 13th November 2006 and also not unmindful of Articles 141 and 142 of the Constitution of India and the effect thereof, as reminded by the learned counsel appearing for the Committee. At this stage, we do not want to undertake the journey of exploring true meaning of NRI de hors three categories prescribed by Their Lordships. We strictly confine to the interpretation within the frame-work of the directions in the above order and not beyond that. In this context, we keep in mind the golden

rule of interpretation of statute and apply the same in the present cases by giving plain and simple meaning to the words contained in the order dated 13th November 2006.

20. In the above backdrop, it is necessary to refer to Categories 1 and 2 of the order, which prescribe one of the parents to be NRI residing ordinarily abroad and first degree relatives of the students also residing ordinarily abroad. Thus, category 3 NRI is other than NRI of categories 1 and 2. In case of non-availability of categories 1 and 2 NRI, SFIs might have to fall back on category 3 so that the seats belonging to 15% NRI quota may not go unutilized and financial hardships can be mitigated for the present academic year only.

21. It is to be noted that category 3 begins with phrase if the student has no parents or near relatives or taken as a ward by some other nearest relative such students also may be considered for admission and, then, proviso with usage of word 'provided' by Their Lordships in the context that guardian treating such student as a ward bona fide files an affidavit indicating interest shown in the affairs of the student and also his relationship with the student/ward with other requirements. It cannot be said that Their Lordships were inclined to give an omnibus interpretation of NRI and any NRI can be considered as legal and valid sponsorer of a student, irrespective of his near, close or nearest relationship with the student. In fact, the first and foremost category is

about one of the parents of such student seeking admission in NRI quota ordinarily residing abroad as an NRI and then a person sponsoring student for admission should have first degree relationship with the student and ordinarily residing abroad as NRI as per category 2 and, thereafter, comes category 3 in question, where, the phrase begins with if the student has no parents or near relatives, meaning thereby, 'no NRI' parents as per category 1 or no NRI near relatives as per category 2 and in absence of both the above categories of NRI, if the student is taken as a ward by some other nearest relative, such student can also be considered for admission, provided the criteria laid down in category 3 thereafter are fulfilled. Therefore, the criteria laid down by Justice R.J. Shah Committee of applying the above-referred category 3 and by including second degree relatives and more in definition of NRI for admission in NRI quota are quite in consonance with the directions contained in the order dated 13th November 2006.

21.1 The arguments advanced by the learned counsel for the petitioners of any kind of relationship of sponsoring NRI with student/ward for the purpose of admission in NRI quota, cannot be accepted, even though the phrase 'taken as a ward by some other nearest relative' precedes by disjunctive 'or'. Even if the above proposition is examined from another angle, by keeping categories 1 and 2 in mind and usage of words 'ward' and 'guardian', it leads to only one interpretation that, phrase “guardian

shall file an affidavit" about his relationship with the student and bona fide treatment indicating interest shown in the affairs of such student/ward, begins with word 'provided' and that word precedes with sentence which includes category of NRI, namely, 'taken as a ward by some other nearest relative', meaning thereby, a relative who is not near relative as defined in category 2. Therefore, even rejection of clarification application filed by Justice R.J. Shah Committee to replace second 'or' with 'and' in this category by Their Lordships stating that no clarification to the order dated 13th November 2006 is required, does not affect the interpretation canvassed hereinabove, which is in consonance with paragraph 131 of P.A. Inamdar. Thus, expansion of definition of NRI by Justice R.J. Shah Committee to second degree relatives and more as per criteria reproduced in paragraph 15 of this order is not in disregard to what is prescribed by Their Lordships in three categories.

22. Before issuing any direction or granting any relief on the basis of above discussion and finding, it is necessary to refer to the submissions canvassed by learned counsel appearing for the students belonging to the general category and admitted against cancellation of admission of the petitioners in NRI quota by paying prescribed fees as per SFI standards and as per the liberty granted by Their Lordships in the order dated 13th November 2006 that, in case NRI quota remains unfilled, the same to be filled in by the students belonging to the State list. The students of

general category, after surrendering their earlier admissions in respective professional courses, have taken admission against seats earmarked for NRIs, like the petitioners. These students have also undergone two or three rounds of counseling and studied in the colleges pursuant to the order passed by Justice R.J. Shah Committee on their admission in various professional colleges for the academic year 2006-2007, which is on the verge of completion and the final annual examination is on anvil. Any direction, whatsoever, at this stage, will have far-reaching repercussions. However, admission of three students, namely, Patel Pooja, Solanki Dimple and Premal Mayurika, which came to be ratified by Their Lordships, deserves a different look since their admission on the basis of NRI figured in the information supplied by the Justice Shah Committee to the Apex Court after considering their cases on the basis of extended and extendable definition of family unit.

23. We are not impressed by the submission made by the learned counsel appearing for the petitioners about the impugned order cancelling admission of students on the ground that some reasons were supplied later on, which were not found in the original order, reveal non-application of mind on the part of the Committee, and defects of the order cannot be cured by supplying reasons later on, in view of the explanation given in the affidavit in reply filed on behalf of the Committee that the mistake of clerical nature occurred due to computer

snag, which came to be ratified later on appears to be bona fide.

24. Upon examination of affidavits filed by the sponsoring NRIs in this group of petitions, it reveals that the contents thereof are not satisfactory and, in fact, in many cases, even the affidavits do not disclose clear relationship of sponsoring NRI with the ward. Even with reasonable understanding of relationship of the family members, one cannot discern nature of relationship in view of vague and ambiguous averments made therein. The contents of the affidavits reflect that, some how, attempts have been made to bring contents therein within the parameters of category 3 of the order dated 13th November 2006. Not only that, but, the sponsoring NRIs have suddenly awakened from the slumber and extended the canopy of guardianship so as to confer benediction to a distant relative, a ward, and file an affidavit with only purpose to secure admission of such ward under NRI quota without satisfying the criteria of relationship, interest shown in the affairs of student/ward and that also suffers from insufficiency of proof. A careful scrutiny of affidavits filed before the Committee and before this Court does not disclose any relationship with the students, which may fall in the category of 'some other nearest relative', except three students whose admissions came to be ratified by the Apex Court. Therefore, the findings of the Committee in this regard cannot be upset. The Committee has rightly held in cases of the students whose admissions came to be cancelled, except the

petitioners whose admissions came to be ratified by Their Lordships, that the first term of MBBS would be over and the examination would be conducted soon and, therefore, fresh affidavits cannot be permitted.

25 Special Civil Application Nos. 1676 of 2007, 1677 of 2007, 1692 of 2007 and 1693 of 2007, filed by Shah Moxit, Gol Varundev, Patel Kaushal and Koradia Rakesh, are required to be rejected since relationship with NRI is a family friend and it is nowhere reflected that they are relatives under category 3 of the order dated 13th November 2006. The relationship is of 'family friend' and no other relationship is shown.

26. Thus, we hold that the criteria of NRI fixed by Justice R.J. Shah Committee, pursuant to the order dated 13th November 2007, are not running contrary to the directions issued by Their Lordships for the Academic Year 2006-2007 and the cancellation of admission by Justice R.J. Shah Committee, based upon such criteria not fulfilled by the students, cannot be said to be unreasonable or arbitrary, which requires any interference by this Court, except for three students whose admissions were ratified by the Apex Court on the basis of the statement made by learned Additional Solicitor General, by which, the concept of family unit was extended or extendable. We are of the view that, when

the information was supplied by Justice Shah Committee to the learned Additional Solicitor General, a conscious decision was already taken by the Committee to place the material on record about the status of students seeking admissions in NRI quota and criterion of extended and/or extendable family unit was conceptualized and, accordingly, the admission of candidates qualifying the above criteria came to be ratified by Their Lordships.

27. In view of the above, we allow Special Civil Application No.1681 of 2007 filed by Patel Pooja, Special Civil Application No.1686 of 2007 filed by Solanki Dimple, and Special Civil Application No. 1690 of 2007 filed by Premal Mayurika, since their admissions were ratified by Their Lordships in the order dated 15th December 2006. With regard to above three students, namely, Patel Pooja, Solanki Dimple and Premal Mayurika, the respondents are directed to continue their admissions for the Academic Year 2006-2007 in view of the fact that the above three students have continued to pursue their studies in the respective colleges since their admission.

28. Special Civil Application No.1675 of 2007 filed by Shah Forum Umeshbhai stands disposed of as withdrawn.

29 Rest of the petitions stand rejected. There shall be no order as to

costs.

(Y.R. MEENA, C.J.)

(ANANT S. DAVE, J.)

[swamy]